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**In the Supreme Court of the United States**

**OCTOBER TERM, 1942.**

**No. 530.**

THE SWAN CARBURETOR COMPANY,  
*Petitioner and Appellant Below,*

VS.

CHRYSLER CORPORATION,  
*Respondent and Appellee Below.*

**REPLY BRIEF FOR PETITIONER.**

F. O. RICHEY,  
B. D. WATTS,  
H. F. McNENNY,  
*Attorneys for Petitioner.*

RICHEY & WATTS,  
1150 Union Commerce Bldg.,  
Cleveland, Ohio,  
*Of Counsel.*

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## REPLY BRIEF FOR PETITIONER.

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**Reeke-Nash Decree was Final:** Respondent is in error in asserting (Respondent's brief, page 15) that the decree in the *Reeke-Nash* case holding valid the claims here in suit was a "mere interlocutory decree, not a final decree on which alone an estoppel can be founded." This decree (R. Vol. I, pp. 19 to 21) disposed of every issue in the case and terminated the suit. Nothing remained to be decided by the court, so that the decree could not be other than final.

Respondent confuses this decree with the type frequently entered in patent cases in which an accounting is ordered to determine profits and damages. Such decrees have been held to be interlocutory for certain purposes (*Simmons v. Grier*, 258 U. S. 82, 89). In the *Reeke-Nash* decree no accounting was ordered (R. Vol. I, pp. 21) and nothing further remained to be decided. Thus the conflict between the decision below and the applicable decisions of this Court (Petition, Point F, pages 29 to 36) is present. It is not denied by Respondent except by the erroneous contention as to the nature of the decree.

**Round and Square Manifolds:** The patent in suit is not limited to manifolds of square cross section (Respondent's brief, pages 3 and 5). Round and other cross sections are illustrated in the drawing and described in the specification of the patent in suit (Record, Vol. IV, p. 1200, p. 1208, lines 6 to 12).

**Heaters:** The use of an exhaust heater on the manifold by Respondent and by the other infringers, as illustrated in the chart at the end of the Petition, is not a distinction from the patented invention (Respondent's brief, pages 3 and 14). The patent in suit shows the exhaust heater at 25 (R. Vol. IV, p. 1204), and describes it in the specification (R. Vol. IV, p. 1208, lines 36 *et seq.*).

**New Issues:** Respondent's argument (Brief, pp. 6 to 8) that the decision of the court below is right for different reasons is irrelevant to the issues on this petition. The basic error of the argument is that it deals with form and names of parts rather than substance and functions performed, contrary to the rule established by this Court in *Machine Co. v. Murphy*, 97 U. S. 120, 125.

**Respondent's Chart:** The statement on the chart opposite page 8 of Respondent's brief that the Reeke-Nash manifold was held to infringe "because of the sharp square corners," indicated by the red arrow, is incorrect. In each of the decisions in the Reeke-Nash case infringement was found because the Reeke-Nash manifolds operate like and achieve the result of the Swan manifold and carry out the Swan method (II R. N. 1124; Appendix to Petition p. 24; 88 F. (2) 876, pp. 887-888). In the picture of the accused manifold at the bottom of the chart facing page 8 sharp corners at the junction of the riser and distributing zone are clearly shown. This is the subject matter of claims 13 and 22 in suit. Claim 13 was found to be infringed by the Reeke-Nash manifold for the reason that in claim 13, as in the other claims, "the gist of the inventive

concept was the creation of the maximum turbulence as above described, not restricted to any particular form'' (88 Fed. (2) 887).

**Swan's Oral Discussion:** The report of the oral discussion of the Society of Automotive Engineers of Swan's Fundamental Improvements in Manifold Design published in the Journal of that society (R. Vol. V, pp. 1665 to 1678), an excerpt from which is reproduced in the Appendix to respondent's brief, has been cited in most of the suits on the Swan patent. All of the courts have refused to accept the contention that anything said in this discussion can vary the terms of the patent, which discloses round cross sections and which is not limited to sharp square corners. The discussion was about a particular embodiment of the invention, not about the patent or the invention itself, so that even if Swan had said what respondent contends it would not be controlling or even material.

But respondent is in error. Swan made no statement that the square cross section and sharp, square corners at the turns were of the essence of his invention. Circular cross section elbows embodying the invention were referred to (Respondent's brief, p. 20). As to the corners, Swan said that the *virtue*, or the essence, is not the particular shape of the corner or the degree of sharpness, but the function which it performs in aiding turbulence and re-mixing.

Respectfully submitted,

F. O. RICHEY,

B. D. WATTS,

H. F. MCNENNY,

*Attorneys for Petitioner.*

RICHEY & WATTS,

1150 Union Commerce Bldg.,

Cleveland, Ohio,

*Of Counsel.*